

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0424-PST-E TCEQ ID: RN105457196 CASE NO.: 35539
RESPONDENT NAME: DAVIS AND WARDLAW OIL CO., INC.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: DAVIS AND WARDLAW OIL CO., INC., 202 West Pecan Street, Seymour, Baylor County with a fuel delivery to a facility located at 405 South Highway 78, Wylie, Collin County</p> <p>TYPE OF OPERATION: Fuel distributor</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 30, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Michael Lee Styles, Registered Agent, DAVIS AND WARDLAW OIL CO., INC., P.O. Box 1040, Seymour, Texas 76380-1040 Mr. Phil Davis, Vice President, DAVIS AND WARDLAW OIL CO., INC., P.O. Box 1040, Seymour, Texas 76380-1040 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 13, 2008</p> <p>Date of NOV/NOE Relating to this Case: February 22, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>Failure to ensure that the displaced vapors from the underground storage tank ("UST") were captured during transfer of gasoline from a tank-truck into a UST system. Specifically, no vapor recovery hose was connected during delivery of gasoline into the regular unleaded tank at a facility located at 405 South Highway 78, Wylie, Collin County, Texas. Also, gasoline vapors were observed by sight and smell coming from the pressure vacuum relief [30 TEX. ADMIN. CODE § 115.221 and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$900</p> <p>Total Deferred: \$180 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$720</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, implement procedures and train fuel delivery staff to ensure that the vapor recovery hose is connected before gasoline is delivered from a tank-truck into a UST or other stationary storage container in nonattainment areas; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

TCEQ

DATES	Assigned	3-Mar-2008	
	PCW	12-Mar-2008	Screening 7-Mar-2008 EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	DAVIS AND WARDLAW OIL CO., INC.		
Reg. Ent. Ref. No.	RN105457196		
Facility/Site Region	3 - Abilene	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35539	No. of Violations	1
Docket No.	2008-0424-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Shontay Wilcher
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum	\$0	Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History -10% Enhancement Subtotals 2, 3, & 7 -\$100

Notes

Reduction for High Performer Classification.

Culpability

No

0% Enhancement

Subtotal 4 \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5 \$0

Before NOV

NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

0% Enhancement*

Subtotal 6 \$0Total EB Amounts \$22Approx. Cost of Compliance \$750

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$900

OTHER FACTORS AS JUSTICE MAY REQUIRE

0%

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$900

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$900

DEFERRAL

20%

Reduction

Adjustment -\$180

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

 \$720

Screening Date 7-Mar-2008

Docket No. 2008-0424-PST-E

PCW

Respondent DAVIS AND WARDLAW OIL CO., INC.

Policy Revision 2 (September 2002)

Case ID No. 35539

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN105457196

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance
History
Notes

Reduction for High Performer Classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

Screening Date 7-Mar-2008		Docket No. 2008-0424-PST-E		PCW											
Respondent DAVIS AND WARDLAW OIL CO., INC.		<small>Policy Revision 2 (September 2002)</small>													
Case ID No. 35539		<small>PCW Revision February 29, 2008</small>													
Reg. Ent. Reference No. RN105457196															
Media [Statute] Petroleum Storage Tank															
Enf. Coordinator Shontay Wilcher															
Violation Number		<div style="border: 1px solid black; padding: 2px;">1</div>													
Rule Cite(s)		<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 115.221 and Tex. Health & Safety Code § 382.085(b)</div>													
Violation Description		<div style="border: 1px solid black; padding: 5px;">Failed to ensure that the displaced vapors from the underground storage tank ("UST") were captured during transfer of gasoline from a tank-truck into an UST system. Specifically, no vapor recovery hose was connected during delivery of gasoline into the regular unleaded tank at a facility located at 405 South Highway 78, Wylie, Collin County, Texas. Also, gasoline vapors were observed by sight and smell coming from the pressure vacuum relief.</div>													
Base Penalty				<div style="border: 1px solid black; padding: 2px;">\$10,000</div>											
>> Environmental, Property and Human Health Matrix															
OR	<table border="1" style="margin: auto;"> <tr> <td></td> <th colspan="3">Harm</th> </tr> <tr> <td></td> <th>Major</th> <th>Moderate</th> <th>Minor</th> </tr> </table>					Harm				Major	Moderate	Minor			
		Harm													
		Major	Moderate	Minor											
<table border="1" style="margin: auto;"> <tr> <td>Release</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Actual</td> <td><div style="border: 1px solid black; padding: 2px;"></div></td> <td><div style="border: 1px solid black; padding: 2px;"></div></td> <td><div style="border: 1px solid black; padding: 2px;">x</div></td> </tr> <tr> <td>Potential</td> <td><div style="border: 1px solid black; padding: 2px;"></div></td> <td><div style="border: 1px solid black; padding: 2px;"></div></td> <td><div style="border: 1px solid black; padding: 2px;"></div></td> </tr> </table>				Release				Actual	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;">x</div>	Potential	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>
Release															
Actual	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;">x</div>												
Potential	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>												
				Percent <div style="border: 1px solid black; padding: 2px;">10%</div>											
>> Programmatic Matrix															
<table border="1" style="margin: auto;"> <tr> <td></td> <th>Falsification</th> <th>Major</th> <th>Moderate</th> <th>Minor</th> </tr> <tr> <td></td> <td><div style="border: 1px solid black; padding: 2px;"></div></td> <td><div style="border: 1px solid black; padding: 2px;"></div></td> <td><div style="border: 1px solid black; padding: 2px;"></div></td> <td><div style="border: 1px solid black; padding: 2px;"></div></td> </tr> </table>						Falsification	Major	Moderate	Minor		<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	
	Falsification	Major	Moderate	Minor											
	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>											
Percent <div style="border: 1px solid black; padding: 2px;">0%</div>															
Matrix Notes		Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.													
Adjustment				<div style="border: 1px solid black; padding: 2px;">\$9,000</div>											
				<div style="border: 1px solid black; padding: 2px;">\$1,000</div>											
Violation Events															
Number of Violation Events		<div style="border: 1px solid black; padding: 2px;">1</div>	Number of violation days												
		<div style="border: 1px solid black; padding: 2px;">1</div>													
<small>mark only one with an x</small>	daily	<div style="border: 1px solid black; padding: 2px;"></div>	Violation Base Penalty <div style="border: 1px solid black; padding: 2px;">\$1,000</div>												
	monthly	<div style="border: 1px solid black; padding: 2px;"></div>													
	quarterly	<div style="border: 1px solid black; padding: 2px;"></div>													
	semiannual	<div style="border: 1px solid black; padding: 2px;"></div>													
	annual	<div style="border: 1px solid black; padding: 2px;"></div>													
single event	<div style="border: 1px solid black; padding: 2px;">x</div>														
One single event is recommended based on documentation of the violation during the February 13, 2008 investigation.															
Economic Benefit (EB) for this violation			Statutory Limit Test												
Estimated EB Amount		<div style="border: 1px solid black; padding: 2px;">\$22</div>	Violation Final Penalty Total <div style="border: 1px solid black; padding: 2px;">\$900</div>												
This violation Final Assessed Penalty (adjusted for limits)				<div style="border: 1px solid black; padding: 2px;">\$900</div>											

Economic Benefit Worksheet**Respondent** DAVIS AND WARDLAW OIL CO., INC.**Case ID No.** 35539**Reg. Ent. Reference No.** RN105457196**Media** Petroleum Storage Tank**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$750	13-Feb-2008	13-Sep-2008	0.6	\$22	n/a	\$22

Notes for DELAYED costs

Estimated cost to obtain a vapor recovery hose to control displaced vapors when transferring gasoline into a stationary storage container. The Date Required is the date of the investigation and the Final Date is the expected date of compliance.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs**Approx. Cost of Compliance**

\$750

TOTAL

\$22

Compliance History

Customer/Respondent/Owner-Operator:	CN600962724	DAVIS AND WARDLAW OIL CO., INC.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN105457196	DAVIS AND WARDLAW OIL CO INC	Classification: N/A	Site Rating: N/A
ID Number(s):				
Location:	202 W PECAN ST, SEYMOUR, TX, 76380			
TCEQ Region:	REGION 03 - ABILENE			
Date Compliance History Prepared:	March 13, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 13, 2002 to March 13, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Shontay Wilcher		Phone:	(512) 239-2136

Site Compliance History Components

- Has the site been in existence and/or operation for the full five year compliance period? Yes
- Has there been a (known) change in ownership of the site during the compliance period? No
- If Yes, who is the current owner? N/A
- If Yes, who was/were the prior owner(s)? N/A
- When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- Any criminal convictions of the state of Texas and the federal government.
N/A
- Chronic excessive emissions events.
N/A
- The approval dates of investigations. (CCEDS Inv. Track. No.)
1 02/21/2008 (618749)
- Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- Environmental audits.
N/A
- Type of environmental management systems (EMSs).
N/A
- Voluntary on-site compliance assessment dates.
N/A
- Participation in a voluntary pollution reduction program.
N/A
- Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DAVIS AND WARDLAW OIL CO.,
INC.
RN105457196**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0424-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding DAVIS AND WARDLAW OIL CO., INC. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent, a fuel distributor headquartered at 202 West Pecan Street in Seymour, Baylor County, Texas, delivered and dispensed motor vehicle fuel to a facility located at 405 South Highway 78 in Wylie, Collin County, Texas (the "Facility").
2. The Facility consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about February 27, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Nine Hundred Dollars (\$900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Hundred Twenty Dollars (\$720) of the administrative penalty and One Hundred Eighty Dollars (\$180) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As a fuel distributor at the Facility, the Respondent is alleged to have failed to ensure that the displaced vapors from the underground storage tank ("UST") were captured during transfer of gasoline from a tank-truck into an UST system, in violation of 30 TEX. ADMIN. CODE § 115.221 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on February 13, 2008. Specifically, no vapor recovery hose was connected during delivery of gasoline into the regular unleaded tank at a facility located at 405 South Highway 78, Wylie, Collin County, Texas. Also, gasoline vapors were observed by sight and smell coming from the pressure vacuum relief.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: DAVIS AND WARDLAW OIL CO., INC., Docket No. 2008-0424-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, implement procedures and train fuel delivery staff to ensure that the vapor recovery hose is connected before gasoline is delivered from a tank-truck into a UST or other stationary storage container in nonattainment areas, in accordance to 30 TEX. ADMIN. CODE § 115.221; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2301 Gravel Drive
Fort Worth, Texas 76118-6951

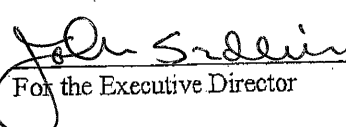
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

DAVIS AND WARDLAW OIL CO., INC.
DOCKET NO. 2008-0424-PST-E
Page 5

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

6/30/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

6-18-08
Date



Name (Printed or typed)

Vice Pres
Title

Authorized Representative of
DAVIS AND WARDLAW OIL CO., INC.

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

